

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,
Plaintiff / Counterclaim Defendant,

v

J.T. POSEY COMPANY,
Defendant / Counterclaim Plaintiff.

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) Civil Action No. 05-10917 PBS
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**PLAINTIFF'S OBJECTIONS TO DEFENDANT'S
PRETRIAL DISCLOSURES**

Pursuant to Rule 26(a)(3), plaintiff The HipSaver Company, Inc. ("HipSaver") hereby objects to Posey Company, Inc.'s Pre-Trial Disclosure, filed on May 1, 2007.

HipSaver objects to the witness designation and testimony of the following Posey witnesses to the extent that they are offered as 30(b)(6) witnesses for the Posey Company because Posey failed to produce any of these witnesses in response to HipSaver's 30(b)(6) deposition notice, as required by Rule 37 of the Federal Rules of Civil Procedure¹:

Mr. Jeffrey Yates

Mr. Charles Kline

¹ *Rainey v. American Forest and Paper Ass'n, Inc.*, 26 F.Supp.2d 82, 94-95 (D.D.C. 1998)(stating that "[u]nless it can prove that the information was not known or was inaccessible, a corporation cannot later proffer new or different allegations that could have been made at the time of the 30(b)(6) deposition" and noting that "[F.R.C.P. 37] aims to prevent a corporate defendant from thwarting inquiries during discovery, then staging an ambush during a later phase of the case" and that "this objective guides operation of the Rule irrespective of whether the corporate party has improper motives" and finding that "without having to probe defendant's intentions in this case, it is clear that allowing it to introduce the [non-30(b)(6) testimony at issue] at this juncture would produce the very result that the Rule aims to forestall.").

Ms. Leanne Powers

Mr. Lee Rash

HipSaver expressly reserves its right to lodge objections in its Motions *in Limine*, to be filed May 15, 2007, to Posey's final witness and exhibit lists on May 22, 2007, and throughout trial.

THE HIPSAVER COMPANY, INC.
By its Attorneys,

/s/ Courtney M. Quish
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Dated: May 14, 2007

CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

/s/ Courtney M. Quish
May 14, 2007

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